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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

SANDY VASQUEZ,

Plaintiff,

vs.

VMWARE, INC.,

Defendant.

Case No. 5:19-cv-02182

COMPLAINT

CLASS ACTION

DEMAND FOR JURY TRIAL

Action Filed: April 23, 2019

Plaintiff Sandy Vasquez (“Plaintiff” or “Ms. Vasquez”), individually and on behalf of all others similarly situated, by her attorneys, brings the following allegations against VMware, Inc. (“Defendant” or “VMware”):

SUMMARY OF THE CLAIMS

1. Plaintiff Sandy Vasquez, individually and on behalf of all others similarly situated, brings this case against VMware for unlawful discrimination in violation of the Civil Rights Act of 1866, as codified by 42 U.S.C. § 1981, and the Private Attorney General Act, as codified by California Labor Code §§ 2698, *et seq.* (“PAGA”).

2. VMware, an American technology company and provider of virtualization and cloud computing software, refused to hire individuals with federal work authorization unless they are U.S. citizens, permanent residents or have a transferable visa. This company-wide policy and

1 practice of denying individuals employment based on alienage and immigration status is
2 discriminatory and unlawful under § 1981 of the Civil Rights Act, and under § 2699(a) of PAGA
3 because the policy and practice violates California Labor Code § 1019.1(a)(3).

4 **PARTIES**

5 ***Plaintiff***

6 3. Plaintiff Sandy Vasquez is a resident of New York, New York. She has a
7 bachelor's degree in Information Systems and Technology from Bellevue College. Plaintiff is
8 federally authorized to work in the United States under Deferred Action for Childhood Arrivals
9 ("DACA"), and she has an employment authorization document ("EAD") that evidences her
10 authorization to work.

11 ***Defendant***

12 4. Defendant VMware is an American technology company and provider of
13 virtualization and cloud computing software. VMware is headquartered in Palo Alto, California,
14 and VMware's actions as alleged in this Complaint took place in California.

15 **JURISDICTION AND VENUE**

16 5. This Court has subject matter jurisdiction over Plaintiff's § 1981 claim under 28
17 U.S.C. § 1331. This Court has supplemental jurisdiction over Plaintiff's PAGA claim under 28
18 U.S.C. § 1367.

19 6. This Court is empowered to issue declaratory judgment under 28 U.S.C. §§ 2201
20 and 2202.

21 7. Venue is proper in this district under 28 U.S.C. § 1391(b) because Defendant
22 resides or is headquartered in the Northern District of California and a substantial part of the
23 events giving rise to the claims occurred in this district.

24 **BACKGROUND**

25 ***Federal Work Authorization***

26 8. Non-citizens must have authorization from the federal government to work in the
27 United States. Permanent resident cards, EADs, and employment-related visas that allow a non-
28 citizen to work for a particular employer are the three forms of evidence of federal authorization

1 to work for non-citizens. *See* 8 C.F.R. § 274a.12. There are dozens of eligibility categories that
 2 permit non-citizens to obtain EADs in connection with a pending or approved application with
 3 the United States Citizenship and Immigration Services (“USCIS”). *See* 8 C.F.R. §§ 274a.12
 4 (a)(2)–(20), (c)(1)–(36). Individuals with EADs include, but are not limited to, individuals such
 5 as Plaintiff who are recipients of DACA.

6 ***DACA***

7 9. On June 15, 2012, President Barack Obama announced that the United States
 8 Department of Homeland Security (“DHS”) would not seek to remove certain young immigrants
 9 under new DHS guidelines now known as DACA.¹ Under the DACA guidelines, DHS grants
 10 deferred action for two years with the option to renew for an additional two years. Individuals
 11 with DACA are eligible to obtain an EAD, a Social Security number, and a Social Security card.

12 10. As of August 31, 2018, there are approximately 699,350 DACA recipients residing
 13 in the United States.²

14 **STATEMENT OF FACTS**

15 ***Discrimination Against Plaintiff***

16 11. In January 2018, Ms. Vasquez was a student at Bellevue College. In or around
 17 January 2018, Ms. Vasquez applied for a New Hire Grad position as a Technical Support
 18 Engineer with VMware.

19 12. On January 19, 2018, Danielle French, a recruiter for VMware, contacted Ms.
 20 Vasquez, scheduled an interview, and informed Ms. Vasquez that she thought Ms. Vasquez
 21 would be a great fit for the Technical Support Engineer position.

22 13. On January 23, 2018, Ms. French interviewed Ms. Vasquez. During the interview,
 23 they discussed the position and Ms. Vasquez’s qualifications. Ms. French abruptly terminated the
 24 interview, however, after she asked Ms. Vasquez if she is a U.S. citizen, and Ms. Vasquez
 25

26 ¹ President Obama, *Remarks by the President on Immigration (June 15, 2012)*, available at
 27 <http://www.whitehouse.gov/the-press-office/2012/06/15/remarks-president-immigration>.

28 ² USCIS, *Approximate Active DACA Recipients: Country of Birth As of August 31, 2018*, available at
https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/DACA_Population_Data_August_31_2018.pdf.

1 responded that she is not and informed Ms. French that her work authorization is through DACA.
 2 Ms. French explained that VMware requires that applicants be either a U.S. citizen or a lawful
 3 permanent resident and that VMware does not provide sponsorship to employees and ended the
 4 call. Ms. Vasquez did not hear back from Ms. French or VMware until after she filed a PAGA
 5 notice.

6 14. Ms. Vasquez felt embarrassed and humiliated by VMware's refusal to hire her
 7 because of her immigration status. Ms. Vasquez also felt anxiety and stress at the prospect of not
 8 being able to find employment in a technology company, and as a consequence she experienced a
 9 number of symptoms, including sleepless nights.

10 15. Ms. French's actions in rejecting a work-authorized DACA holder are consistent
 11 with VMware job postings. The postings read: "You must be a U.S. citizen or have a
 12 transferable visa (H-1B, Green Card, etc.) to apply," or "You must be a U.S. citizen or permanent
 13 resident to apply for this role. VMware will not sponsor a non-transferable visa for this role."
 14 DACA holders are not U.S. citizens or permanent residents, and they do not have a visa.

15 ***VMware's Policy is Unlawful and Harms Plaintiff and other Similarly Situated Individuals***

16 16. VMware's policy and practice to refuse to hire individuals who are federally
 17 authorized to work but are not U.S. citizens, do not have a permanent resident card, or do not
 18 have a transferable visa harmed Plaintiff, has harmed and will continue to harm other similarly
 19 situated individuals, and violates 42 U.S.C. § 1981, PAGA, and California Labor Code §
 20 1019.1(a)(3).

21 17. There is an actual and substantial controversy between Plaintiff and VMware.

22 **CLASS ACTION ALLEGATIONS**

23 18. Plaintiff brings her class allegations under Fed. R. Civ. P. 23(a), (b)(2) and (b)(3)
 24 on behalf of a class defined as follows: All individuals within the jurisdiction of the United States
 25 who are federally authorized to work and who, beginning on January 30, 2013, have sought
 26 employment with VMware and who were denied employment by VMware or were discouraged
 27 from applying for a position at VMware because they are not U.S. citizens, do not have a
 28 permanent resident card, or do not have a transferable visa.

1 19. Plaintiff is a member of the Class.

2 20. Upon information and belief, the members of the Class are so numerous that
3 joinder of all of them is impracticable. VMware has offices throughout the United States and
4 there are over a million non-citizens in the United States who have EADs,³ and they therefore,
5 despite having work authorization, do not meet VMware's employment requirements because
6 they are not U.S. citizens, do not have a permanent resident card, or do not have a transferable
7 visa. Plaintiff does not know the precise number of Class members as much of this information is
8 in VMware's possession.

9 21. There are questions of law and fact common to the Class, and these questions
10 predominate over any questions affecting only individual members. Common questions include,
11 among others: (1) whether it is VMware's policy or practice to reject employment applicants
12 because they are federally authorized to work but are not U.S. citizens, do not have a permanent
13 resident card, or do not have a transferable visa; (2) whether VMware's policy as set forth above
14 deprives Plaintiff and the Class of the right to contract for work in violation of § 1981; (3)
15 whether VMware's policy as set forth above deprives Plaintiff and the Class of rights under
16 PAGA and California Labor Code § 1019.1(a)(3); (4) whether Plaintiff and the Class suffered
17 harm by reason of VMware's unlawful policy; (5) whether Plaintiff and the Class are entitled to
18 compensatory damages; (6) whether Plaintiff and the Class are entitled to punitive damages; (7)
19 what equitable, injunctive and declaratory relief for the Class is warranted; and (8) the scope of a
20 resulting permanent injunction.

21 22. Plaintiff's claims are typical of the claims of the Class: (1) Plaintiff was within the
22 jurisdiction of the United States and is federally authorized to work but is not a U.S. citizen, does
23 not have a permanent resident card, and does not have a transferable visa; (2) Plaintiff applied for
24 a position with VMware; and (3) Plaintiff was denied employment due to her alienage and
25 immigration status. All of these claims are substantially shared by each and every Class member.

26
27 ³ In Fiscal Year 2014 alone, USCIS issued a total of 1,235,028 EADs. USCIS, *I-765, Receipts Approvals and*
28 *Denials for FY2008 through FY2014*, available at https://www.uscis.gov/sites/default/files/files/nativedocuments/I-765_Receipts_Approvals_and_Denials_for_FY2008_through_FY2014.pdf.

1 All of the claims arise from the same course of conduct by VMware, and the relief sought is
2 common.

3 23. Plaintiff will fairly and adequately represent and protect the interests of the
4 members of the Class. Plaintiff has no conflict with any Class member. Plaintiff is committed to
5 the goal of having VMware revise its policies to stop discriminating against Plaintiff and other
6 Class members.

7 24. Plaintiff has retained counsel competent and experienced in complex
8 discrimination class actions.

9 25. Class certification is appropriate under Fed. R. Civ. P. 23(b)(2) because VMware
10 has acted and/or refused to act on grounds generally applicable to the Class, making appropriate
11 declaratory and injunctive relief with respect to Plaintiff and the Class as a whole. The Class
12 members are entitled to injunctive relief to end VMware's common, uniform, unfair, and
13 discriminatory policy and/or practice and other relief.

14 26. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(3) because
15 common questions of fact and law predominate over any questions affecting only individual
16 members of the Class, and because a class action is superior to other available methods for the
17 fair and efficient adjudication of this litigation since joinder of all members is impracticable. The
18 Class members have been damaged and are entitled to recovery as a result of VMware's common,
19 uniform, unfair, and discriminatory policies and practices that resulted in denial of employment to
20 each class member. There are no pending actions raising similar claims. VMware engages in
21 continuous, permanent, and substantial activity in California. There will be no undue difficulty in
22 the management of this litigation as a class action.

23 **FIRST CLAIM FOR RELIEF**
24 **Private Attorney General Act**
(California Labor Code §§ 2698, *et seq.*)

25 27. Plaintiff re-alleges and incorporates by reference the allegations set forth in all
26 prior paragraphs of this Complaint.

27 28. Plaintiff brings this claim on her own behalf and on behalf of the Class.
28

1 29. On July 20, 2018, under California Labor Code §§ 2699(a) and 2699.3, Plaintiff
2 provided notice to the California Labor Workforce Development Agency (“LWDA”) that
3 Plaintiff intended to assert PAGA claims on her own behalf, and in a representative capacity on
4 behalf of other similarly situated individuals, for Defendant’s violation of California Labor Code
5 § 1019.1(a)(3).

6 30. The LWDA did not respond to Plaintiff’s PAGA notice by certified mail within
7 the statutory period and, as a result, Plaintiff has perfected her right to sue Defendant in a civil
8 action and to collect statutory penalties under California Labor Code § 2699.3(a)(2)(A).

9 31. On March 25, 2019, VMware and Plaintiff entered into an agreement to toll the
10 statute of limitations on Plaintiff’s claims until April 24, 2019.

11 32. As a result of the acts alleged above, Plaintiff brings this claim on her own behalf
12 and on behalf of the Class for penalties under California Labor Code § 2699 for Defendant’s
13 violations of California Labor Code § 1019.1(a)(3). California Labor Code § 1019.1(a)(3)
14 prohibits employers from refusing to honor work authorization based upon the specific status or
15 term of status that accompanies the authorization to work. Here, VMware has a policy and
16 practice to refuse to hire individuals who are federally authorized to work but are not U.S.
17 citizens, do not have a permanent resident card, or do not have a transferable visa. VMware
18 refused to hire Plaintiff and members of the Class because of the specific status or term of status
19 that accompanies their authorization to work, in violation of California Labor Code §
20 1019.1(a)(3).

21 33. Under California Labor Code § 2699, Plaintiff and the Class are entitled to be
22 awarded twenty-five percent of all penalties due under California law, in addition to interest,
23 attorney’s fees, and costs, and the Court should award seventy-five percent of all penalties due
24 under California law to the State of California. The civil penalty for each violation of §
25 1019.1(a)(3) is \$10,000.

26 34. Plaintiff and the Class therefore seek to recover from Defendant allowable
27 penalties, interest, costs, and attorney’s fees, in an amount according to proof at trial in
28 accordance with California Labor Code §§ 2698, *et seq.*

SECOND CLAIM FOR RELIEF
Alienage Discrimination
(42 U.S.C. § 1981)

35. Plaintiff re-alleges and incorporates by reference the allegations set forth in all prior paragraphs of this Complaint.

36. Plaintiff brings this claim on her own behalf and on behalf of the Class.

37. Plaintiff is a person within the jurisdiction of the United States.

38. Plaintiff is an alien.

39. Plaintiff is legally authorized to work in the United States.

40. VMware intentionally discriminated against Plaintiff and the Class on the basis of alienage by denying them contracts to work or deterring them from work opportunities because they are not U.S. citizens, do not have a permanent resident card, or do not have a transferable visa.

41. VMware's intentional discrimination against Plaintiff and the Class interfered with their right to make and enforce contracts.

42. VMware's policy and practice of refusing to hire Plaintiff and members of the Class based on their alienage despite being legally authorized to work in the United States harmed Plaintiff and the Class and constitutes unlawful alienage discrimination in the making and enforcing of contracts in violation of 42 U.S.C. § 1981.

43. Plaintiff and the Class have no plain, adequate, or complete remedy at law to redress the wrongs alleged, and the injunctive relief sought in this action is the only means of securing complete and adequate relief. Plaintiff and the Class are now suffering, and will continue to suffer, irreparable injury from VMware's discriminatory acts and omissions.

44. VMware's conduct has caused, and continues to cause, Plaintiff and members of the Class substantial harm, including, but not limited to, emotional distress, in an amount to be determined at trial.

JURY DEMAND

1. Plaintiff demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class pray for relief as follows:

1. Certification of the case as a class action on behalf of the proposed Class;
2. Designation of Plaintiff Sandy Vasquez as a representative on behalf of the Class;
3. Designation of Plaintiff's counsel of record as Class counsel;
4. General damages, including compensatory damages according to proof;
5. Punitive damages according to proof;
6. Declaratory judgment that the policy and practice complained of is unlawful and violates 42 U.S.C. § 1981 and PAGA;
7. A preliminary and permanent injunction against VMware and its officers, agents, successors, employees, representatives, and any and all persons acting in concert with them, from engaging in each of the unlawful policies, practices, customs and usages set forth;
8. Reasonable attorneys' fees, expenses, and costs, including under California Labor Code § 2699(g) and 42 U.S.C § 1988;
9. Interest at the maximum legal rate for all sums awarded; and
10. Such other and further relief as the Court may deem just and proper.

Dated: April 23, 2019

Respectfully submitted,

MEXICAN AMERICAN LEGAL DEFENSE AND
EDUCATIONAL FUND

/s/ Julia A. Gomez
Thomas A. Saenz
Julia A. Gomez

Attorneys for Plaintiff Sandy Vasquez